

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

XPERTUNIVERSE, INC.,

Plaintiff,

V.

CISCO SYSTEMS, INC.

Defendant.

Civil Action No. 09-157 (JAP)

## ORDER

Presently before the Court are defendant Cisco Systems, Inc.’s (“Cisco”) Motion to Dismiss Certain Claims in Plaintiff’s Second Amended Complaint or, in the alternative, to Strike, and plaintiff Xpertuniverse, Inc.’s (“XU”) Motion for Leave to File Third Amended Complaint. Both motions are opposed.

Rule 15(a) allows a party to amend its pleading with leave of the court and instructs the court to “freely give leave when justice so requires.” Although the decision to grant leave to amend is trusted to the Court’s sound discretion, the Supreme Court has stated that leave to amend should be granted absent “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). XU now seeks to correct alleged deficiencies identified by Cisco in its Second Amended Complaint. There has been no “undue delay, bad faith or dilatory motive” on the part of XU in seeking to file a Third Amended Complaint. Additionally, Cisco has not demonstrated that it will be unduly prejudiced by the amendment. Having considered the written submissions of the parties, the Court finds that none of the grounds articulated by the Supreme Court for denying a motion to amend a pleading are

present in this case. Further, it appears that the alleged defects in XU's Second Amended Complaint have been addressed in the proposed Third Amended Complaint. Therefore,

**IT IS** on this 25th day of May, 2010,

**ORDERED** that Cisco's Motion to Dismiss Certain Claims in Plaintiff's Second Amended Complaint or, in the alternative, to Strike is **DENIED** without prejudice to Cisco's ability to move against the Third Amended Complaint, it is further

**ORDERED** that XU's Motion for Leave to File Third Amended Complaint is **GRANTED** with no further amendments.

/s/ JOEL A. PISANO  
United States District Judge